

SUBSTANCE ABUSE PREVENTION AND TREATMENT (SAPT) BLOCK GRANT FREQUENTLY ASKED QUESTIONS

1. Is licensing substance abuse treatment programs an authorized activity under the Substance Abuse Prevention and Treatment (SAPT) Block Grant?

Yes! Licensing substance abuse treatment programs is part of Quality Assurance. Quality Assurance includes activities to assure conformity to acceptable professional standards and identify problems that need to be remedied. This is supported by an August 12, 1999, e-mail message from the state's CSAT project officer. The message contains the statement "Licensing programs is an authorized activity under the SAPT Block Grant." Quality Assurance is part of substance abuse treatment, which is authorized pursuant to Title 42, USC §300x-21(b).

2. Can SGFs counted toward the SAPT Block Grant MOE be used to match another federal grant?

Generally, yes, but the statutory and regulatory requirements governing the other federal grant(s) must be reviewed prior to making a final determination as to whether or not SGF counted towards the SAPT MOE can be used to match another federal grant. For example, state general funds included in the state's SAPT MOE requirement can be used to match federal Medicaid funds for substance abuse treatment services, but SGF funds included in the state's SAPT MOE are not Qualified State Expenditures under TANF.

Any amount of the SAPT MOE used to match one federal grant (e.g. Medicaid) cannot be used to match another federal grant.

A matching share provision is one under which the grantee is required to contribute a portion of the total project cost. The "match" may be 50-50 or any other mix specified by the governing legislation. A matching share provision typically prescribes the percentages of required federal and nonfederal shares. Matching share requirements are often intended to "assure local interest and involvement through financial participation." They may also serve to hold down federal costs. The purpose of a maintenance of effort requirement is to ensure that funds provided by the federal government are used to fund an increased level of program activity, and that the grantee does not simply replace SGF dollars with federal dollars.

3. Can funds from one federal grant be used as matching funds for another federal grant or can the same non-federal funds be used to match two federal grants?

Neither the federal nor the nonfederal share of a particular grant program may be used by a grantee to match funds provided under another federal grant program, unless specifically authorized by law. In other words, a grantee may neither use funds received under one federal grant to meet the matching funds requirement of a separate grant, nor may it use the same grantee dollars to meet two separate matching requirements. Per Volume 56 Comptroller General, Decision 645 (1977), and 47 Comp. Gen. 81 (1967), a rule to the contrary would nullify the cost-sharing objective of stimulating new grantee expenditures. It is also important to note that the *Common Rule* for grants, Section 24, prohibits the use of federal funds and grantee funds to match more than one federal grant.

4. To what SAPT Block Grant set-asides can the costs of Resource Development activities be applied?

The costs of Resource Development activities are not limited to Administration. The costs of Resource Development activities can be applied to substance abuse treatment and the twenty- percent primary prevention set-aside, and to Administration, but NOT the HIV or any other set-aside. Per the Federal Fiscal Year 2002 SAPT Block Grant instructions, Resource Development activities can be distributed between treatment and prevention. Resource Development activities include planning, coordination,

and needs assessment, quality assurance, training (post-employment), education (pre-employment), program development, research and evaluation, and information systems. *For definitions of these terms, please see page 40 of the FFY 2002 SAPT Block Grant application instructions.*

5. Can counties use SAPT block Grant funds to contract with out-of-state providers?

Counties may contract with out-of-state providers if all the following conditions are met:

- A county complies with all applicable state and relevant "border" county contracting and procurement rules and guidelines;
- A county complies with all the SAPT Block Grant regulations; and
- A county is ONLY billed by the out-of-state provider for the treatment costs for eligible California resident.

6. Can SAPT Block Grant funds, from the HIV set-aside, be used for infectious disease testing?

If all of the following limited conditions are met, SAPT Block Grant funds can be used for infectious disease testing at the site at which such individuals are receiving substance abuse treatment:

- The individual must be HIV positive;
- The treatment program or project must be receiving funds from the SAPT Block Grant HIV set-aside;
- The individual must be undergoing substance abuse treatment; and
- SAPT Block Grant funds must be the payment of last resort.

The Title 42, USC §300x-24(b)(7), states that "early intervention services" relating to HIV disease means:

- Appropriate pretest counseling;
- Testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;
- Appropriate post test counseling; and
- Providing the therapeutic measures described in ii above.

Infectious disease testing under these limited conditions would allowed.

The answer to this question is based on a February 9, 1999, letter from the Director, Center for Substance Abuse Treatment.

7. Can the state expend more than 5 percent of a SAPT Block Grant award for HIV Early Intervention Services?

The answer is no. The set-aside for HIV Early Intervention Services is calculated based on the methodology contained in Title 42, USC §300x-24(b)(4). The HIV Early Intervention set-aside calculated pursuant to this section is a fixed minimum and maximum amount. For California, this fixed amount cannot be less than 5 percent or more than 5 percent. This interpretation was confirmed in a September 22, 1999, e-mail message from CSAT and represents the preferred interpretation of SAMHSA's Office of General Counsel.

8. Can SAPT Block Grant funds be used for Tobacco Cessation Counseling?

SAPT Block Grant funds can be used for Tobacco Cessation Counseling as long as this counseling is part of the clients' substance abuse treatment plan and **NOT** a stand-alone program or initiative. Title 42, USC §300x-21(b) authorizes the use of SAPT Block Grant funds only for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse, and for related activities contained in 42 USC §300x-24.

9. Is the expenditure of SAPT Block Grant funds for Vocational Rehabilitation Services authorized under the SAPT Block Grant?

The use of SAPT Block Grant funds is not allowed for Vocational Rehabilitation Services.

Vocational Rehabilitation Services provide for gaining and maintaining job skills, which allow for productive employment. Vocational rehabilitation includes vocational testing, counseling, guidance, job training, job placement, and other relevant activities designed to improve a person's ability to become economically self-supporting.

Per Title 42, USC §300x-21(b), SAPT Block Grant funds can only be expended for planning, carrying out, and evaluating activities to prevent and treat substance abuse.

10. Can SAPT Block Grant funds be expended for group homes or transitional housing?

SAPT Block Grant funds can be used to establish and maintain a revolving fund to make **loans** to group homes (Title 24, USC §330x-25). In California, this program is called the Resident-Run Housing Program. The RRHP provides interest-free loans up to \$4,000 to rent a house or an apartment to be used as an alcohol and drug-free, self-supporting living arrangement for individuals who are recovering alcoholics and/or drug addicts. Loans are to be repaid in two years.

Otherwise, SAPT Block Grant funds cannot be used to fund group homes or transitional housing.

SAPT Block Grant funds can be used for residential adolescent treatment programs. A residential adolescent treatment program is licensed as a "group home" by the Department of Social Services and certified by the Department's Licensing and Certification Division. If all the beds of a group home do not meet the criteria for constituting an adolescent residential treatment program, then the SAPT Block Grant funds can only be used for the costs attributable to the residential substance abuse treatment component.

SAPT Block Grant funds can be used for adult residential treatment programs, which are licensed by the Department's Licensing and Certification Division. Adult residential treatment programs are not considered group homes or transitional housing.

11. Can SAPT Block Grant funds be used to augment funding for programs that receive insufficient program funding? For example, can SAPT Block Grant funds be used to fund activities preformed under SACPA, drug courts, parole service network, etc.?

The answer would be yes if all the following conditions are met:

- The SAPT Block Grant funds are only used for planning, carrying out, and evaluating activities to prevent or treat substance abuse;
- The expenditure does not violate a state law or procedure for expending of state funds; and
- The expenditure does not circumvent a requirement, term or condition, or other restriction or prohibition of another federal grant.

12. What activities can be funded with SAPT Block Grant funds?

Title 42, USC §300x-31(a)(2) authorizes the state to use up to 5 percent of a SAPT Block Grant award for administrative costs.

Title 42, USC. §300x-22(a) requires 20 percent of a SAPT Block Grant award to be used for Primary Prevention.

Title 42, USC. §300x-22(b) requires that the sum of 5 percent of the Federal Fiscal Year 1993 SAPT Block Grant award, and 5 percent of the FFY 1994 SAPT Block Grant award be expended to increase, relative to FFY 1992, treatment services designed for pregnant women and women with dependent children. For FFYs subsequent to FFY 1994, the state must maintain this level of effort for such treatment services.

Title 42, USC. §300x-24(b) requires the state is to expend 5 percent of a SAPT Block Grant award for HIV Early Intervention Services. *Additional information on HIV Early Intervention Services can be found on "Inside ADP."*

Title 42, USC §300x-21(b) contains the authorized activities for the SAPT Block Grant. This section states that the state will expend the grant only for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and for related activities authorized in Section 300x-24. Section 300x-24 contains the requirements governing the use of SAPT Block Grant funds for HIV Early Intervention Services and Tuberculosis Services.

Per Title 45, Code of Federal Regulations, Part 96, §96.137, the SAPT Block Grant must be the funding of last resort for services authorized under Section 300x-22(b), Allocations Regarding Women, and Section 300x-24, Requirements Regarding Tuberculosis and Human Immunodeficiency Virus.

Just because an activity is authorized does not necessarily mean that the corresponding expenditure is allowable. For example, any cost allocable to other federal grant awards or programs may not be charged to the SAPT Block Grant to overcome any restrictions, to fund deficiencies, to avoid restrictions imposed by law or terms of the federal awards, or for other reasons.

13. How are administrative costs defined under SAPT Block Grant regulations?

The SAPT Block Grant regulations do not specifically define "administrative costs." Thus, pursuant to Title 45, Code of Federal Regulations, Part 96, §96.30, the state's processes and procedures apply. Utilizing the state's processes and procedures, SAPT Block Grant administrative costs are defined as follows:

"All costs including operating expenses for: the Directorate, Office of Legal Services, Office of Legislative and External Affairs, Division of Administration, System Development and EDP Operation Support. Also included in administrative costs are costs charged under the statewide Cost Allocation Plan."

14. What is the obligation and expenditure period for SAPT Block Grant funds and can these dates be extended?

Per Title 42, USC §300x-62(a), SAPT Block Grant funds are available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the funds were appropriated. For example, the obligation and expenditure period for the FFY 2010 SAPT Block Grant award is 10/1/2009 to 9/30/2011. The obligation and expenditure periods are fixed by statute and no extensions are authorized. A federal agency is a creature of law, and can function only to the extent authorized by law. Thus, if the statute does not authorize an extension, none can be granted.

15. What happens when one or more SAPT Block Grant set-asides are not met?

Recipients of grant funds are expected to use the funds to accomplish the purposes for which they were awarded, subject to any conditions that may attach to the grant award. Expenditures or costs that meet the grant purposes and conditions are termed "allowable costs." An expenditure that is not for grant purposes or is contrary to a condition of the grant is not an allowable cost and may not be properly charged to a grant.

There are two potential outcomes. One occurs when a set-aside was not met because the funds were not expended. In this case, the unexpended federal funds would be returned to the federal government. The second outcome occurs when the set-aside was not met and the federal funds were expended. In this instance, the Department may not be able to establish that it is entitled to retain the funds. The Department would be subject to repaying, with interest, the amount by which it failed to comply with a given set-aside. Since the grant funds were expended, repayment would be made from the non Federal funds. The penalties for failure to comply with the SAPT Block Grant requirements/agreements are contained in Title 42, USC §300x-55.

16. Why do I have to track the obligations and expenditures of a grant to a particular Federal Fiscal Year appropriation (Individual Grant Award) rather than use the "First In, First Out" method?

When Congress enacts grant legislation and provides appropriations to fund the grant, it is exercising the spending power conferred upon it by the Constitution. As such, it has the power to attach terms and conditions to the availability or receipt of grant funds. The period of availability is a condition Congress attached to the SAPT grant in the enabling legislation. A fundamental principle in grant law is that the grantee has the burden of establishing that it is entitled to grant money. Documenting compliance with the terms and conditions governing grant requirements establishes entitlement to the grant money. Tracking obligations and expenditures by individual grant award documents that the funds are obligated and expended within the period of availability.

The Substance Abuse and Mental Health Services Administration (SAMHSA), Division of Grants Management, sent a February 19, 1999, letter to the states. The letter informed states of the documentation required to support the obligation of SAPT Block Grant funds and that they needed to track obligations and expenditures by individual SAPT Block Grant award.

In a March 24, 1999, letter, SAMHSA informed the Department that it must track obligations and expenditures by individual SAPT Block Grant award effective with the FFY 2001 SAPT Block Grant award.

The SAPT Block Grant statute [Title 42, USC §300x-22(a) and §300x-24(b)] requires that a certain percentage of an individual grant award be set-aside and expended for Primary Prevention and HIV Early Intervention Services. Tracking obligations and expenditures by individual grant award, including these set-asides, is necessary to document compliance with the set-aside requirements.

Tracking obligations and expenditures by individual SAPT Block Grant award is also a good business practice in that it enables the Department to identify potential compliance issues before they become a liability for the State General Fund.

Title 45, Code of Federal Regulations (CFR.), Part 96, §96.30 requires fiscal control and accounting procedures to be sufficient to permit the preparation of reports required by the statute authorizing the Block Grant. The fiscal reports required by the SAPT Block Grant require the reporting of obligations and expenditures by individual SAPT Block Grant award.

Using FIFO could have the effect of extending the period of availability beyond that specified in Title 42, USC §300x-62. Only Congress, in an appropriation act, can extend the period of availability beyond the two-year periods specified in §300x-62. The action by Congress must be explicit because of 1) the rules against repeals by implication, 2) the presumption that every appropriation in an annual appropriation act is a one-year appropriation, and 3) the prohibition in Title 31, USC. §1301(c) against

construing an appropriation to be permanent or available continuously unless the appropriation act expressly so states.

17. Can SAPT Block Grant funds be expended for drug testing?

If the cost is part of an alcohol and other drug treatment program and regime, and is NOT a standalone cost, SAPT Block Grant funds can be used for drug testing.

18. Can a county or private provider contract with a for profit organization for drug testing?

First, the drug testing must be part of an alcohol and other drug treatment program and regime, and NOT a standalone cost. If this test is met, then the answer is yes. The organization providing the drug testing would be a vendor and not be a recipient of financial assistance. Title 42, USC §300x-31(a)(1)(E) requires the provision of financial assistance only to public or private non-profit entities. Financial assistance is the transfer of money, property, or other direct assistance to an eligible recipient to support a public purpose authorized by law. The public purpose for which SAPT Block Grant funds are authorized is contained in Title 42, USC §300x-22(b). Per §300x-22(b), SAPT Block Grant funds can only be used for planning, carrying out, and evaluating activities to prevent and treat substance abuse.

19. Can a county contract with a for-profit organization for drug testing on behalf of private alcohol and other drug treatment providers?

First, the drug testing must be part of an alcohol and other drug treatment program and regime, and NOT a standalone cost. If this test is met, the county can contract with a for-profit organization for drug testing on behalf of private non-profit alcohol and other drug treatment providers. However, the county CANNOT contract with a for-profit organization for drug testing on behalf of for-profit alcohol and other drug treatment providers, as it would be a form of direct assistance. Direct assistance is the provision of services to recipients in lieu of cash.

Title 42, USC §300x-31(a)(1)(E) prohibits the provision of financial assistance to for-profit entities. Financial assistance includes direct assistance. Financial assistance is the transfer of money, property, or other direct assistance to an eligible recipient to support a public purpose authorized by law.

20. Do the SAPT Block Grant regulations contain a non-supplantation requirement?

Yes! In addition to the SAPT MOE, Title 45, CFR, Part 96, §96.134(a) contains a non-supplantation requirement. Section 96.134(a) reads in part "The Block Grant shall not be used to supplant state funding of alcohol and other drug prevention and treatment programs."

The Federal Register dated March 31, 1993, contains the statement: "In addition to the maintenance of effort by the principal agency, the Secretary requires the state not to use the Block Grant to supplant State funding of substance abuse prevention and treatment programs."

21. What is the difference between the SAPT Block Grant MOE requirement and the non-supplantation requirement contained in the SAPT Block Grant regulations, Title 45, Code of Federal Regulations, Part 96, §96.134(a)?

The SAPT MOE applies to the Department as the Principal State Agency (PSA). The non-supplantation requirement would apply to state funding of alcohol and other drug prevention and treatment programs in state agencies other than the Department.

Pursuant to Title 42, USC §300x-30(a), the SAPT MOE is derived from a mathematical calculation. Per §300x-30(a), the PSA's current fiscal year's state expenditures for authorized activities must be at

least equal to the average of such expenditures for the two preceding fiscal years. If the non-supplantation provision of 45 CFR, §96.134(a) were applied to the PSA, the PSA would be required to maintain current year's state expenditures at a level of at least equal to the preceding fiscal year. This would conflict with and change the SAPT MOE provisions of Title 42 USC §300x-30(a). Since regulations cannot conflict with or change statutory provisions, the non-supplantation provision of 45 CFR, §96.134(a) would apply to state funding of alcohol and other drug prevention and treatment programs in state agencies other than the PSA.

22. How much is the Department required to expend for services to pregnant women and women with dependent children?

Per Title 42, USC §300x-22(b), the Department is required to expend not less than \$26,349,141 in a fiscal year for services to pregnant women and women with dependent children, and of the \$26,349,141, \$15,554,000 must be SAPT Block Grant funds.

23. For what services is the SAPT Block Grant the funding of last resort?

Per Title 45, CFR, Part 96, §96.137, the SAPT Block Grant must be the funding of last resort for services authorized under §300x-22(b), and §300x-24. Section 300x-22(b) pertains to services to pregnant women and women with dependent children. Section 300x-24 pertains to HIV Early Intervention Services and Tuberculosis Services. Additional information on the HIV Early Intervention Services can be found on Inside ADP.